IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	DIVISION ONE
	)	
Respondent,	)	No. 63026-1-I
	)	
v.	)	
	)	
MICHAEL ALAN SCHERMERHORN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: April 26, 2010
	)	

Dwyer, C.J. — A charging document must contain all of the elements of a charged crime to apprise the defendant of the crime with which he or she is being charged. The State charged Michael Schermerhorn with possession of a stolen vehicle, in violation of RCW 9A.56.068. By specifically citing to RCW 9A.56.068 in the charging document, the State apprised Schermerhorn that he was being charged with possession of a stolen motor vehicle. Thus, we affirm.

I

The State charged Schermerhorn with possession of a stolen vehicle, in violation of RCW 9A.56.068.[1] The charge resulted from Schermerhorn's failure to return a truck to his former employer. The amended information did not refer

[1] This statute provides:

> (1) A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.
>
> (2) Possession of a stolen motor vehicle is a class B felony.

RCW 9A.56.068.

to the particular truck or to a stolen *motor* vehicle but, rather, referred only to a "stolen vehicle." A jury subsequently convicted him as charged.

II

Schermerhorn contends for the first time on appeal that the amended information omitted an essential element of the offense of possession of a stolen vehicle because it did not modify the term "vehicle" with the adjective "motor." Because of this omission, he contends, the State did not fully inform him of the nature of the illegal conduct and the crime it was charging. We disagree.

Both the federal and state constitutions require that a defendant be apprised of the charged offense so that he or she may prepare a defense. State v. Goodman, 150 Wn.2d 774, 784, 83 P.3d 410 (2004) (citing State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995)). To satisfy this constitutional requirement, a charging document must allege facts that identify the crime charged and support all elements of the charged offense. State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). Thus, the charging document must include all statutory and nonstatutory elements of the charged offense. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991).

In assessing the sufficiency of a charging document, we conduct a two-part inquiry: "(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the

inartful language which caused a lack of notice?" Kjorsvik, 117 Wn.2d at 105–06. Where a defendant challenges the sufficiency of the charging document for the first time on appeal, we construe the document liberally in favor of validity so as to discourage sandbagging. Goodman, 150 Wn.2d at 787 (citing Kjorsvik, 117 Wn.2d at 102). "Words in a charging document are read as a whole, construed according to common sense, and include facts which are necessarily implied." Kjorsvik, 117 Wn.2d at 109.

Again, Schermerhorn was charged with possession of a stolen vehicle, in violation of RCW 9A.56.068. Pursuant to RCW 9A.56.068, "A person is guilty of possession of a stolen vehicle if he or she . . . [possesses] a stolen motor vehicle." An element of this possessory offense is that the vehicle be a *motor* vehicle. This element had to appear in some form in the amended information.

A fair construction of the charging document leads us to conclude that necessary elements of the charged offense appeared in the amended information. The amended information specifically cited to RCW 9A.56.068 as the criminal statute that Schermerhorn was charged with violating. As explained above, this statute explicitly criminalizes possession of a stolen motor vehicle. Although the State did not use the adjective "motor" or refer to a particular motor vehicle, it nonetheless apprised Schermerhorn that he was being charged with possession of a stolen motor vehicle by citing to RCW 9A.56.068. Schermerhorn was not left to "search for the rules or regulations [he was]

accused of violating." Kjorsvik, 117 Wn.2d at 101 (citing State v. Jeske, 87 Wn.2d 760, 765, 558 P.2d 162 (1976)).

We find unpersuasive Schermerhorn's argument that the term "vehicle," as used in RCW 9A.56.068 is vague. The statute specifically criminalizes possession of a stolen "motor vehicle." In addition, the criminal code provides that the term "vehicle" means "a 'motor vehicle' as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail." RCW 9A.04.110(28). Pursuant to RCW 46.04.320, "'Motor vehicle' means every vehicle that is self-propelled," except for certain specified self-propelled vehicles. Schermerhorn's citation to RCW 46.04.670, which defines the term "vehicle" as used in Title 46 RCW, is inapposite, as the criminal statutory provision underlying the charge specifically refers to a "motor vehicle." Schermerhorn could not have been prosecuted under RCW 9A.56.068 for anything but possession of a stolen motor vehicle.

The amended information contained all of the essential elements of the charged offense. Schermerhorn does not contend that he suffered actual prejudice. Therefore, we conclude that the amended information was sufficient to apprise Schermerhorn of the offense that the State was charging.

Affirmed.

Dwyer, C. J.

We concur:

Edlington, J. Grosse, J.